



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2014-0385; FRL-9917-92-Region 5]

Approval and Promulgation of Air Quality Implementation Plans;

Ohio; Ohio PM_{2.5} NSR

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), revisions to Ohio's state implementation plan (SIP) as requested by the Ohio Environmental Protection Agency (OEPA) to EPA on June 19, 2014. The revisions to Ohio's SIP implement certain EPA regulations for particulate matter smaller than 2.5 micrometers (PM_{2.5}) by establishing definitions related to PM_{2.5}, defining PM_{2.5} increment levels, and setting PM_{2.5} class 1 variances. The revisions also incorporate changes made to definitions and regulations that recognize nitrogen oxides (NO_x) as an ozone precursor, revising and adding definitions, adding Federal land manager notification requirements, and incorporating minor organizational or typographical changes.

DATES: This direct final rule will be effective [insert date 60 days after date of publication in the Federal Register], unless EPA receives adverse comments by [insert date 30 days after date

of publication in the Federal Register]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No.

EPA-R05-OAR-2014-0385, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: damico.genevieve@epa.gov.
3. Fax: (312) 385-5501.
4. Mail: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2014-0385. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charmagne Ackerman, Environmental Engineer, at (312) 886-0448 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charmagne Ackerman, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0448, ackerman.charmagne@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

II. What Action is EPA Taking?

III. Statutory and Executive Order Reviews.

I. Background

On June 19, 2014, OEPA submitted revisions to chapters in the Ohio Administrative Code (OAC) 3745-31. Revisions were made to the following chapters: 3745-31-01 through 3745-31-04, OAC 3745-31-06 through 3745-31-23, 3745-31-25, 3745-31-26, 3745-31-29 and 3745-31-32. The changes made were to implement the PM_{2.5} National Ambient Air Quality Standards (NAAQS), PM_{2.5} New Source Review (NSR) program and regulations related to NO_x as a precursor to ozone; include definitions for "PM_{2.5}," "PM_{2.5} direct emissions," "PM_{2.5} emissions," "PM_{2.5} precursor," "emergency," "emergency engine," "permanent," "publicly owned treatment works," "quantifiable," "semi-public disposal system," and "surplus"; include Federal land manager notification requirements; clarification of nonattainment provisions; and minor clarification and organizational revisions. OEPA has requested that we not take action on OAC 3745-31-01(SSS) (1) (b) for the definition of "modify"; OAC 3745-31-13(H) (1) (c) for the PM_{2.5} exemption to pre-application ambient monitoring; and 3745-31-16(C) for PM_{2.5} significant impact levels.

II. What Action is EPA Taking?

EPA is partially approving the SIP revision submittal.

These revisions were made to comply with regulations enacted to address the PM_{2.5} NAAQS and also to include NO_x as a precursor to ozone. These revisions implement the NSR and prevention of significant deterioration (PSD) program, as required by EPA's regulations.

EPA is approving the following rules: OAC 3745-31-01(P); OAC 3745-31-01(LL); OAC 3745-31-01(MMM); OAC 3745-31-01(NNN); OAC 3745-31-01(QQQ); OAC 3745-31-01(TTTT); OAC 3745-31-01(UUUU); OAC 3745-31-01(VVVV); OAC 3745-31-01(WWWW); OAC 3745-31-01(NNNNN); OAC 3745-31-01(VVVVV); OAC 3745-31-11(B); OAC 3745-31-13; and 3745-31-16. EPA is not taking action at this time on the remaining submitted rules and will do so in a subsequent rulemaking action.

A. PM_{2.5}-related Actions

On April 25, 2007, EPA published the "Clean Air Fine Particle Implementation Rule" (72 FR 20586) as a final rule in the Federal Register. This 2007 action provides rules and guidance for the CAA requirements for SIPs to implement the 1997 fine particle NAAQS. As part of this rulemaking, EPA promulgated 40 CFR part 51, subpart Z "Provisions for Implementation of PM_{2.5} National Ambient Air Quality Standards". 40 CFR part 51, subpart Z outlines the requirements that a state SIP must meet to implement and comply with the PM_{2.5} NAAQS. The

final rule became effective on May 29, 2007.

On May 16, 2008, EPA published the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})" (73 FR 28321) as a final rule in the Federal Register. These 2008 regulations establish the PM_{2.5} NSR program. The PM_{2.5} NSR program includes provisions establishing the PM_{2.5} major source threshold, significant emissions rate, and applicability of NSR to PM_{2.5} precursors. This final rule became effective on July 15, 2008.

OEPA has submitted the following definitions to be added to OAC 3745-31-01: "PM_{2.5}" at 3745-31-01(TTTT); "PM_{2.5} direct emissions" at 3745-31-01(UUUU); "PM_{2.5} emissions" at 3745-31-01(VVVV); and "PM_{2.5} precursor" at 3745-31-01(WWWW). The definition of "baseline area" at 3745-31-01(P) was revised to explicitly identify pollutant air quality impacts that would define a baseline area where a minor source baseline date is already established. The definition of "major source baseline date" at 3745-31-01(MMM) adds October 20, 2010, as the major source baseline date for PM_{2.5}. Ohio's revision of "minor source baseline date" at 3745-31-01(QQQ) establishes October 20, 2011, as the trigger date for PM_{2.5}.

OEPA has revised the definitions of "significant" at 3745-31-01(VVVVV) (1) to add significant emission rates for direct

PM_{2.5} and for sulfur dioxide SO₂ and NO_x as PM_{2.5} precursors.

OEPA revised 3745-31-01 (NNNNN) (2) to include SO₂ and NO_x as precursors to PM_{2.5} in all attainment areas.

OEPA has revised the definition of "regulated NSR pollutant" at 3745-31-01 (NNNNN) (1) (d), and (NNNNN) (2) (a) (ii), to include condensable PM_{2.5} and PM₁₀ into the nonattainment NSR and PSD programs. The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in PM_{2.5} and PM₁₀ emission limits in NSR permits. Instead, EPA determined that states had to account for PM_{2.5} and PM₁₀ condensables for applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in PSD and nonattainment NSR permits beginning on or after January 1, 2011. These requirements are codified at 40 CFR 51.166(b) (49) (i) (a) and 40 CFR 52.21(b) (50) (i) (a).

EPA has determined that the revised rules comply with the revisions to the Federal definitions and provisions pertaining to PM_{2.5} found at 40 CFR 51.100, 51.165, and 51.166.

OEPA's revision to 3745-31-11(B) establishes increments for PM_{2.5}. On October 20, 2010, EPA issued the final rule on the "Prevention of Significant Deterioration for Particulate Matter Less than 2.5 Micrometers - Increments, Significant Impact

Levels and Significant Monitoring Concentration." This rule established several provisions for making PSD permitting determinations for PM_{2.5}, including a system of "increments" which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. OEPA's revisions are consistent with 40 CFR 51.166(c) and 40 CFR 52.21(c).

B. Ozone-related Actions

On November 29, 2005, EPA published the "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase 2" (70 FR 71612). Among other requirements, this rule required regulation of NO_x as a precursor to ozone in NSR permitting. The final rule became effective on January 30, 2006.

OEPA has revised the definitions for "major modification" at 3745-31-01(LL)(2), "major stationary source" at 3745-31-01(NNN)(3), "regulated NSR pollutant" at 3745-31-01(NNNNN) and "significant" at 3745-31-01(VVVVV) to include NO_x as a precursor to ozone. The revisions are consistent with 40 CFR 51.166.

OEPA did not include "or NO_x" to the exemptions to pre-application ambient monitoring in the attainment provisions found in paragraph (H)(1)(f) of OAC 3745-31-13. It is not consistent with 40 CFR 51.166 (i)(5)(i)(f) footnote 1. However,

OEPA submitted a letter to EPA on June 30, 2014, clarifying that the omission of "or NO_x" was not intended and that OEPA has identified NO_x as a precursor to ozone in all other required rule provisions. OEPA also explains that because a major stationary source is required to do source impact analysis, and NO_x has been identified as a precursor to ozone in its revised rules, including the definitions of major stationary source, major modification, and significant noted above, Paragraph (B) of OAC 3745-31-16 requires the same impact analysis as specified in the CFR for ozone and also requires pre-application ambient monitoring of VOC and NO_x. EPA agrees with the analysis in OEPA's letter and does not believe that an applicability or source impact analysis gap would occur as a result of the state's omission of "or NO_x" at OAC 3745-31-13(H)(1)(f). Therefore, the provisions that are being approved by EPA in this rulemaking represent a strengthening of the currently-approved Ohio SIP, specifically with respect to the explicit identification of NO_x as a precursor to ozone.

C. Nonattainment NSR-related Actions

OEPA revised 3745-31-01 (NNNNN) to include SO₂ and NO_x as precursors to PM_{2.5} in all attainment and nonattainment areas. On January 4, 2013, the U.S. Court of Appeals for the District

of Columbia Circuit, in *Natural Resources Defense Council v. EPA*¹ issued a decision that remanded the EPA's 2007 and 2008 rules implementing the 1997 PM_{2.5} NAAQS. Relevant here, the 2008 NSR Rule promulgated NSR requirements for implementation of PM_{2.5} in both nonattainment areas and attainment/unclassifiable areas. The Court found that EPA erred in implementing the PM_{2.5} NAAQS in these rules solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than pursuant to the additional implementation provisions specific to particulate matter nonattainment areas in subpart 4. The Court ordered the EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion." *Id.* at 437.

On April 25, 2014, the Administrator signed a final rulemaking that begins to address the remand (see <http://www.epa.gov/airquality/particulatepollution/actions.html>). Upon its effective date, the final rule classified all existing PM_{2.5} nonattainment areas as "Moderate" nonattainment areas and set a deadline of December 31, 2014, for states to submit any SIP submissions, including nonattainment NSR SIPs, that may be necessary to satisfy the requirements of subpart 4, part D, title I of the CAA with respect to PM_{2.5} nonattainment areas.

In a separate rulemaking process that will follow the April

¹ 706 F.3d 428 (D.C. Cir. 2013).

2014 rule, EPA is evaluating the requirements of subpart 4 as they pertain to nonattainment NSR for PM_{2.5} emissions. In particular, subpart 4 includes section 189(e) of the CAA, which requires the control of major stationary sources of PM₁₀ precursors "except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the standard in the area." Under the court's decision in *NRDC*, section 189(e) of the CAA also applies to PM_{2.5}.

OEPA's revisions to the definition of "regulated NSR pollutant" identify SO₂ and NO_x as regulated PM_{2.5} precursors. While VOCs and ammonia are not regulated PM_{2.5} precursors in PM_{2.5} nonattainment areas in the state, the revisions to the definition of "significant" add emission rates considered significant for direct PM_{2.5} and for SO₂ and NO_x as PM_{2.5} precursors. These revisions, although consistent with the 2008 NSR Rule as developed consistent with subpart 1 of the CAA, may not contain the elements necessary to satisfy the CAA requirements when evaluated under the subpart 4 statutory requirements. In particular, Ohio's submission does not include regulation of VOCs and ammonia as PM_{2.5} precursors, nor does it include a demonstration consistent with section 189(e) showing that major sources of those precursor pollutants would not contribute significantly to PM_{2.5} levels exceeding the standard

in the area. For these reasons, EPA cannot conclude at this time that this part of Ohio's nonattainment NSR submission satisfies all of the requirements of subpart 4 as they pertain to PM_{2.5} nonattainment NSR permitting.

Although the revisions to Ohio's nonattainment NSR rule may not contain all of the necessary elements to satisfy the CAA requirements when evaluated under the subpart 4 provisions, the revisions themselves represent a strengthening of the currently-approved Ohio SIP which does not address PM_{2.5} at all. As a result of the April 25, 2014, final rule, OEPA will have until December 31, 2014, to make any additional submission necessary to address the requirements of subpart 4, including addressing the PM_{2.5} precursors of VOC and ammonia. For these reasons, EPA is approving the nonattainment NSR revisions at 3745-31-01(NNNNN)(1)(c) and 3745-31-01(VVVVV)(1) without listing the absence of either the regulation or evaluation of VOCs and ammonia as PM_{2.5} precursors as a deficiency at this time.

D. Organizational and typographical changes

OEPA also made organizational changes to lettering or numbering of paragraphs as well as corrections to typographical errors. EPA is approving these revisions as they do not change the meaning of the existing language.

We are publishing this action without prior proposal

because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective [**insert date 60 days after date of publication in the Federal Register**] without further notice unless we receive relevant adverse written comments by [**insert date 30 days after date of publication in the Federal Register**]. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective [**insert date 60 days after date of publication in the Federal Register**].

III. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175, nor will it impose substantial direct costs on tribal governments or preempt

tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days after date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 6, 2014.

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.1870 is amended by adding paragraph (c)(161) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(161) On June 19, 2014, the Ohio Environmental Protection Agency submitted several PM_{2.5} rules for approval into the Ohio State Implementation Plan (SIP). The changes to the SIP include establishing definitions related to particulate matter smaller than 2.5 micrometers (PM_{2.5}), defining PM_{2.5} increment levels, and setting PM_{2.5} class 1 variances. The revisions also incorporate changes made to definitions and regulations that recognize nitrogen oxides (NO_x) as an ozone precursor, and incorporating minor organizational or typographical changes.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745-31-01, "Definitions", paragraphs (P), (LLL), (MMM), (NNN), (QQQ), (TTTT), (UUUU), (VVVV), (WWWW), (NNNNN), and (VVVVV), effective May 29, 2014.

(B) Ohio Administrative Code 3745-31-11, "Attainment provisions - ambient air increments, ceilings and classifications", paragraph (B) "Allowable increments", effective May 29, 2014.

(C) Ohio Administrative Code 3745-31-13, "Attainment provisions - review of major stationary sources and major modifications, stationary source applicability and exemptions", effective May 29, 2014.

(D) Ohio Administrative Code 3745-31-16, "Attainment provisions - major stationary source impact analysis", effective May 29, 2014.

(E) May 19, 2014, "Director's Final Findings and Orders", signed by Craig W. Butler, Director, Ohio Environmental Protection Agency.

[FR Doc. 2014-25482 Filed 10/27/2014 at 8:45 am; Publication Date: 10/28/2014]